

entirely within the District of Columbia.

5. Defendant United States Department of Justice (“DOJ”) is an executive department of the federal government of the United States, headquartered in Washington, D.C..

BACKGROUND

6. On July 6, 2006, Plaintiff sent a FOIA request to the DOJ seeking the following documents: “Drafts of any memorandum of law filed in United States v. District of Columbia, et al., District of the District of Columbia Civ. No. 04-00619 (JR) that were shown to any representative or attorney for Father Flanagan’s Boys Home (“Boys Home”) and/or attorneys for plaintiff in Father Flanagan’s Boys Home v. District of Columbia, et al., D.D.C. No. 01-1732 (JR) (the “Boys Home Litigation”); and “Any documents constituting or reflecting communications to any representative or attorney for Boys Home and/or attorneys for plaintiff in the Boys Home Litigation concerning either of the litigations identified in the previous paragraph.” See Exhibit A (July 6, 2006 letter from Michael Rosman, Center For Individual Rights, to Nelson Hermilla, Chief, FOIA/PA Branch, Civil Rights Division, Department of Justice).

7. On July 31, 2006, Nelson D. Hermilla, Chief of the Freedom of Information/Privacy Acts Branch, Civil Rights Division, responded to Plaintiff’s request, indicating that there were no such documents pertaining to item 1 and denying Plaintiff’s request under item 2. Hermilla stated his basis for denial was that “disclosure thereof would interfere with ongoing law enforcement proceedings” under 5 U.S.C. § 552(b)(7)(A). See Exhibit B (July 31, 2006 Letter from Mr. Hermilla to Mr. Rosman).

8. On August 21, 2006, Plaintiff appealed the DOJ’s decision. See Exhibit C (letter from Mr. Rosman to Director of Office of Information and Privacy); Exhibit D

(letter from Priscilla Jones, Office of Information and Privacy, Department of Justice, to Mr. Rosman).

9. To date, the DOJ has not responded to Plaintiff's appeal and has not produced the requested records.

CLAIM FOR RELIEF

VIOLATION OF FREEDOM OF INFORMATION ACT

10. Plaintiff realleges and incorporates by reference paragraphs 1 through 9.

11. Plaintiff is entitled to obtain copies of the requested records. The records sought by Plaintiff are easily-identifiable and readily-obtainable agency records in the DOJ's possession that do not fall within any exemption to the Freedom of Information Act.

12. The DOJ has failed to comply with the applicable time limits under the Freedom of Information Act. More than nine months have passed since the date of Plaintiff's appeal, but to date, no decision has been issued. Consequently, the time for the agency to rule on the appeal has lapsed, since an agency must "make a determination with respect to any appeal within twenty days" following receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

13. The Plaintiff's claim is ripe for judicial determination. The DOJ's failure to issue a timely decision on Plaintiff's appeal has resulted in the exhaustion of any administrative remedies Plaintiff might have been required to pursue under FOIA as a precondition to bringing a FOIA lawsuit, since a requestor of records "shall be deemed to have exhausted his administrative remedies . . . if the agency fails to comply with the applicable time limit provisions" 5 U.S.C. § 552(a)(6)(C)(i).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment for the Plaintiff and award the following relief:

- (a) an order enjoining the DOJ from withholding the records requested in Exhibit A and ordering the production of those documents to the Plaintiff;
- (b) an award of attorneys' fees and costs of this suit; and
- (c) any other such relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Michael E. Rosman
Michael E. Rosman
D.C. Bar No. 454002
Michelle A. Scott
D.C. Bar No. 489097
CENTER FOR INDIVIDUAL RIGHTS
1233 20th St. NW, Suite 300
Washington, DC 20036
(202) 833-8400

Attorneys for Plaintiff,
Center For Individual Rights